**TIMBALAN MENTERI HAL EHWAL DALAM NEGERI, MALAYSIA & ORS.** *a*

**v.**

**CHEOW SIONG CHIN**

SUPREME COURT, KUALA LUMPUR
ABDUL HAMID CJ (MALAYA)
LEE HUN HOE CJ (BORNEO)
HASHIM YEOP SANI SCJ
[CIVIL APPEAL NO.195 OF 1986]
15 MAY 1987 *b*

***CONSTITUTIONAL LAW:*** *Appeal against finding of learned Judge - Restricted Residence Enactment - Section 2(i) - Whether a person entitled to an enquiry before an Order can be made - Section 2(ii) - Cross-appeal by respondent - Enquiry before the Minister makes an Order under s. 2(ii) of the Enactment - Whether optional - Object of Enactment.* *c*

This was an appeal by the appellants and a cross-appeal by the respondent on a question whether a person is entitled to an enquiry before an order can be made under s. 2(i) and 2(ii) of the Restricted Residence Enactment ("the Enactment"). *d*

**Held:**

**[1]** A person arrested under the Enactment no longer has the protection of clause 4 of Article 5 of the Constitution but still enjoys the protection under clause 1 and 3 of Article 5. Therefore an enquiry by the deputy Minister before he makes an Order under s. 2(ii) of the Enactment is optional and for the purpose only of satisfying himself that there are reasonable grounds for believing that the respondent should have his residence restricted. *e*

**[2]** The grounds for restricted residence in the instant case within the scope, ambit and purview of the Enactment.

*[Appeal allowed with costs. Cross-appeal dismissed with costs.]*

**Case referred to:** *f*
*Assa Singh v. Menteri Besar, Johore [1969] 2 MLJ 30*

**Legislation referred to:**
Federal Constitution, art. 5(3), (4)
Restricted Residence Enactment (FMS Cap 39), s. 2, 2(i), (ii)

*For the appellants - P.M. Mahalingam, SFC (Mohd. Rauff b. Nabi Box, SFC, with him)*
*For the respondent - Karpal Singh; M/s. Karpal Singh & Co.* *g*

**JUDGMENT**

**Abdul Hamid CJ (Malaya):**

The appeal was against the finding of Harun J that the respondent detained under an order under s. 2(i) of the Restricted Residence Enactment (the Enactment) was entitled to an enquiry before an order can be made against him under s. 2(ii) of the Enactment. The cross-appeal by the respondent was against the finding of the learned Judge that the grounds for his detention are not within the scope, ambit and purview of the Enactment. We allowed the appeal with costs and also dismissed the cross-appeal with costs. We now state our reasons. *h*

*i*

First, some facts very briefly. The respondent was arrested under an order made by the Deputy Minister of Home Affairs under s. 2(i) of the Enactment on 21 June 1984. The grounds for the detention were that as a registered dealer in commodity trading the respondent had cheated many investors by giving false promises and making false declarations resulting in the investors sustaining considersable financial losses. The grounds for the detention were served on the respondent. He was also informed that any appeal for consideration can be made by him within two weeks after receiving the grounds for detention (p. 36 of the record). Representations were in fact made on behalf of the respondent but were rejected by the Deputy Minister. On 27 August 1984, the Deputy Minister made another order under s. 2(ii) of the Enactment requiring him to reside in the town of Gua Musang in Kelantan for the period of three years from the date of the order.

In the Court below the respondent sought for declarations that-

(1) He was entitled to an enquiry before the said orders were made; and

(2) The grounds for his detention are not within the scope of the Enactment.

The Enactment is a pre-Merdeka law but it was settled in *Assa Singh v. Menteri Besar, Johor* [1969] 2 MLJ 30 that the Enactment is valid but must be read with such modifications as may be necessary to bring it into accord with the provisions of the Constitution in accordance with Article 162(6) of the Constitution. The Enactment empowers the executive to exile any person to any part of the Federation. Section 2 of the Enactment provides the various steps to be taken by the executive. As pointed by Suffian FJ (as he then was) in *Assa Singh*, the Minister first considers written information and makes or causes to be made such enquiry as he may deem necessary. If it appears to him that there are reasonable grounds for believing any person is required to reside in any particular district, he then issues an order for the arrest and detention of such person. After the person is arrested and detained under the first order, the Minister then after such enquiry as he may deem necessary makes an order under s. 2(ii) of the Enactment that from a date to be stated in such order the person would be required to reside in such district or mukim as may be specified in the order.

It would seem agreed in all the main judgements in Assa Singh that the arrest of a person under s. 2(i) is no different from the arrest of a person who is alleged to have committed a crime and that his detention pending an order under s. 2(ii) of the Enactment is no different from the remand in custody of an arrested person pending trial. What is in issue is whether an enquiry must be held before the second order under s. 2(ii) is made against the person. Suffian FJ came down with no uncertain terms that an enquiry after the arrest is optional (p. 37). Gill FJ dealt with the question whether there should be an enquiry before they issue a warrant to arrest a person under s. 2(i) of the Enactment but remained silent on s. 2(ii) of the Enactment (p. 44). In any case this question was not an issue before the Federal Court then. However Ong CJ in what was actually *obiter* said in his judgement that "the learned Solicitor-General concedes, I believe, that the applicant is entitled to an enquiry at which he would have full opportunity of making representations" (at p. 36). This statement has actually created the uncertainty.

After the amendment to Clause 4 of Article 5 of the Constitution by Act A354 which took effect from 27th August, 1976, a person arrested under the Enactment no longer has the protection of Clause 4 of Article 5 of the Constitution relating to production without unreasonable delay before a Magistrate. But he still enjoys the protection under Clause 1 and Clause 3 of Article 5 of the Constitution, i.e. deprivation of his life or liberty only in

accordance with law and his right to be informed of the grounds of his arrest and be defended by Counsel of his choice. The protection under Clause 3 is the relevant one here. Clause 3 of Article 5 of the Constitution reads:

> (3) Where a person is arrested he shall be informed as soon as may be of the grounds of his arrest and shall be allowed to consult and be defended by a legal practitioner of his choice.

It can be observed from the records that the respondent was informed of the grounds of his arrest and detention. It was also not disputed that the respondent did in fact consult a legal practitioner who made representations on his behalf. In other words, he was afforded the opportunity of being heard.

In our judgement, an enquiry by the Deputy Minister before he makes an order under s. 2(ii) of the Enactment is optional and for the purpose only of satisfying himself that there are reasonable grounds for believing that the respondent should have his residence restricted. The respondent is not entitled as of right to an enquiry before an order under s. 2(ii) of the Enactment is issued against him. It is also clear that in this particular case the requirements of Clause 3 of Article 5 of the Constitution have been complied with.

As regards the cross-appeal, it is to be observed that the objection of the Enactment is to maintain public order. The Enactment is a pre-Merdeka law which has proven its usefulness. On the point raised the learned Judge said in his judgement:

> The Enactment indeed gives drastic powers to the executive to exile any person who wears a grey tie because the executive does not like him to wear a grey tie. It was, however, argued that as the allegation against the plaintiff is that of cheating under the Penal Code, he should be prosecuted in the criminal Courts and therefore the Enactment should not be used against him. It is not for the Court to fathom the thoughts of the Minister. The Enactment does give him the power to restrict the plaintiff on the grounds stated because the ground stated is reasonable, that is to say, a cheat should not be allowed to cheat innocent people. It would not be a reasonable ground, if the Minister had stated that the order was made because the plaintiff wore a grey tie. I accordingly hold that the grounds for restricted residence in the instant case are within the scope, ambit and purview of the Enactment.

With respect, we agree and accordingly dismissed the cross-appeal.

Also found at [1987] 2 CLJ 24